

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in §10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.866 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under §10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. \$2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.867 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under §10.863 of this subpart must

maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

§ 10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under §10.864 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (see §10.880 of this subpart).

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.869 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the

§ 10.870

19 CFR Ch. I (4–1–15 Edition)

good in accordance with the procedures set forth in § 10.870 of this subpart. Subject to the provisions of § 10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.871(c) of this part.

§ 10.870 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.869 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.871 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.870 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International

Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.868 and § 10.870 of this subpart, or if, following an origin verification under § 10.887 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.887 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the